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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,320	02/26/2007	Kenneth George Brash	37388-405800	4956
27717	7590	08/19/2009		
SEYFARTH SHAW LLP				
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CHICAGO, IL 60603-5803				
EXAMINER				
PARADISO, JOHN ROGER				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
08/19/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/582,320

**Applicant(s)**

BRASH, KENNETH GEORGE

**Examiner**

John Paradiso

**Art Unit**

3721

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22, 24-30 and 32-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 24-30 and 32-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date 3/9/09, 7/31/09
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-22, 24-30, and 32-73 are rejected under 35 U.S.C. 102(b) as being anticipated by OTSUKI ET AL (JP 08322449-A), as set forth in paragraph 3 of the previous Office Action and reprinted below for convenience:

OTSUKI ET AL discloses a mobile fumigation system positioned within at least one ISO general purpose shipping container (container van 1) comprising a first gas-tight compartment including a fumigation chamber (10); a second compartment (9) including a fumigation apparatus (12) operatively coupled to the fumigation chamber (see Fig. 1); and a partition wall (3) separating the first and second compartments; a fumigant inlet device (21, 13) operatively coupled to the fumigation chamber through the partition wall to allow a fumigant (C02) into the fumigation chamber (10); an extraction device (14) operatively coupled to the fumigation chamber and arranged to remove a majority of the fumigant from the fumigation chamber (see Figs. 2-4); an absorption means (35) operatively coupled to the extraction device (via interconnection of the parts into an assembly) and being designed to absorb the fumigant removed from the fumigation chamber (35 performs the function of absorbing ethylene which is

circulating within the container; no particular fumigant or absorption means being particularly claimed). Also disclosed is a system control box containing a plurality of floor and wall-mounted pipes (see pipes between each of 14-17, 19, & 35 and apertures in 5, 6) independently connected via a system of taps and connectors to a fumigant sampling and detection meter unit (17 connected to the pipes via the interconnected closed loop system; no particular structural configuration being claimed) located in the second compartment (9). The system control box (25) containing a fumigant sampling and detection meter unit (17) and power supply switches for mixing fans, exhaust fan (14), lights (inherently there are light indicators on a control panel), gas heaters (26), and valve actuators (for 18, 22, 23).

### ***Response to Arguments***

3. Applicant's arguments filed 4/27/2009 have been fully considered but they are not persuasive.
  
4. Applicant states on page 13 of his Response that "In contrast, the present invention relates to a method of removing a residual gas from inside a conventional shipping container. The Applicant believes that a container van does not fall within the scope of a conventional shipping container."

However, Examiner notes that during patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). *See also* MPEP § 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). *See also* MPEP § 2111.01.

In this case, the invention of OTSUKI ET AL does disclose a container and items are shipped therein.

5. Applicant states on page 13 of his Response that “Nor does the present application call for the partitioning by a partition wall of the container van.”

However, Examiner maintains the claims of the instant invention read on the prior art, as described above, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same function as before involves only routine skill in the art.

6. Applicant states on page 13 of his Response that "Claim 1 of the present application, for example, has the feature of accessing the container door via an end door opening of the container and extracting at least some of the residual gas present in the container via the end door opening. This is neither disclosed nor suggested by OTSUKI." Applicant further argues on page 14 of his Response that "OTSUKI discloses something completely different than the flushing of a residual gas. OTSUKI does not disclose extracting the residual gas via the end door opening of a container, but rather the well known art of circulating CO<sub>2</sub> gas. CO<sub>2</sub> gas enters the product room storage (10) through a perforated plate (5) and (6) made of punched metal which is arranged in the ceiling and floor of the agricultural products storage room (10) - not through an end door opening 01' the container as in the present application."

However, Examiner points out that the extraction of at least some of the residual gas present in the container inherently happens when the door is opened.

7. Applicant states on page 14 of his Response that "In relation to claim 24, this claim has the feature of a gas inlet for operative coupling to the panel for extracting gas from the enclosure. OTSUKI does not disclose this, but rather the inlet is arranged in the floor or ceiling of the container van, not a panel. Similarly, OTSUKI does not disclose gas extraction apparatus for operative coupling to the panel for extracting gas from the enclosure."

However, OTSUKI ET AL discloses a fumigation apparatus (12) operatively coupled to the fumigation chamber (see Fig. 1); and a partition wall (3) separating the first and second compartments (see Fig. 1 and 3). The partition wall is being read as a panel.

8. Applicant states on page 14 of his Response that “In relation to claim 28 of the present application, OTSUKI does not disclose a member that has a coupled and a de, coupled position, for example with respect to an opening of a container, the member comprising an inlet and a port”.

However, OTSUKI ET AL discloses pipes and couplings to channel the fumigant and gases and such connected pipes and couplings can inherently be decoupled.

### *Conclusion*

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.

/John Paradiso/

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Examiner John Paradiso: (571) 272-4466

August 13, 2009

/Rinaldi I Rada/

Supervisory Patent Examiner, Art Unit 3721

Additional Phone Numbers:

Supervisor Rinaldi Rada: (571) 272-4467

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Fax (Direct to Examiner) (571) 273-4466 (Drafts only)